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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,167	06/26/2003	Casimir R. Kiczek	03-19	8248

7590 03/28/2005

Intellectual Property Department  
Dura Automotive Systems, Inc.  
2791 Research Dr.  
Rochester Hills, MI 48309

EXAMINER
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LOWE, MICHAEL S

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/608,167

Applicant(s)

KICZEK ET AL.

Examiner

M. Scott Lowe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-21 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings (figures 5,6,10 in particular) are grainy and unclear as what is being shown. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the hook member embodiment used with the rim as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top

margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "another end" (add item number 27) and "hook embodiment" (add item number 70) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

Claim 1 is objected to because of the following informalities: line 8 states "connect" but should stated "connected". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,5,14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 states "a vehicle" in line 10, which makes the claim unclear, as there is already "a vehicle" in line 1. For sake of examination it is assumed applicant meant "the vehicle" in line 10.

Claim 5 recites the limitation "the wing nut and latching plate for being secured to the rim" in line 5. It is unclear what is "being secured" to the rim. For sake of examination it is assumed that applicant meant the second flexible member was being secured to the rim.

Claim 14 is missing language between "plate," and "a latching member" in line 3 making the claim unclear. For sake of examination it is assumed applicant meant for there to be an "or" there.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,11-15,17,21, are rejected under 35 U.S.C. 102(b) as being anticipated by Sauner (US 5,975,498).

Re claims 1,11,21, Sauner teaches a latch assembly adapted for use with a vehicle 15 including a tire 32 with a rim 30 with at least one aperture 53, the latch assembly comprising, in combination:

a tire carrier having a first flexible member 18 having one end attached to a winch 10 and another end detachably attached to the tire 32;

a second flexible member 45 having one end connected to the vehicle 15 and another end for connecting to the tire 32;

a locking member 58 disposed in the aperture 53 of the tire 32 and attached to the second flexible member 45, to detachably connect the second flexible member 45 to the rim 30, the second flexible member preventing the tire from detaching from the vehicle when the winch fails.

Re claim 12, Sauner teaches the aperture being arcuate and multi-sided.

Re claims 13,17, Sauner teaches the clamp member being a latch member.

Re claim 14, Sauner teaches the clamp member having a latching member 58,24,22.

Re claim 15, Sauner teaches a winch 10, winch flexible member 18 and a tire plate 24.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3,5,10,19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauner (US 5,975,498) in view of Klein (US 4,047,629).

Re claims 2,3,5,10 Sauner does not teach the rim (rotably) clamped between a support plate (wing nut) and latching member. However, Klein teaches it is known to clamp a tire rim between a support plate (wing nut) 46,38 and latching member 26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Sauner by the general teaching of Klein to (rotably) clamp a tire rim between a support plate (wing nut) and latching member as a known equivalent fastening means and also to more securely grip the rim.

Re claim 19, while all materials (especially metals) will make an audible signal when struck (clamped) together to some degree, Sauner does not teach the rim (rotably) clamped between a support plate (wing nut) and latching member. However, Klein teaches it is known to clamp a tire rim between a support plate (wing nut) 46,38 and latching member 26. It would have been obvious to one of ordinary skill in the art at

the time the invention was made to have modified Sauner by the general teaching of Klein to (rotably) clamp a tire rim between a support plate (wing nut) and latching member as a known equivalent fastening means and also to more securely grip the rim.

Claims 4,6,18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauner (US 5,975,498) in view of Hoagland (US 4,492,506).

Re claims 4,6,18 Sauner does not teach an eyebolt/hook member. However, Hoagland teaches it is known to use eyebolts/hook members 34,120,122 to clamp spare tire rims and flexible members 88. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Sauner by the general teaching of Hoagland to have the second flexible member 45 connected by an eyebolt/hook member assembly as a known equivalent fastening means and also to more securely grip the rim.

Re claim 20, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the locking member go through any available rim aperture desired for convenience.

Claims 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauner (US 5,975,498) in view of Gasser (US 4,809,477).

Re claim 7, Sauner does not teach a toggle member. However, Gasser teaches it is known to use toggle member assemblies to clamp items together. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have



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modified Sauner by the general teaching of Gasser to have a toggle member assembly as a known equivalent fastening means and also to more securely grip the rim.

Claims 8,16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauner (US 5,975,498).

Re claim 8, Sauner does not state whether the load carrying capability of the second flexible member is greater than that of the first flexible member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the load carrying capability of the second flexible member is greater than that of the first flexible member since the second flexible member is a safety member designed to take over when the first flexible member fails.

Re claim 16, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the locking member go through any available rim aperture desired for convenience.

### ***Conclusion***

Applicant's arguments filed 1/10/05 have been fully considered but they are not persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Princell (US 6,505,488) teaches a 2 flexible member safety system.

Dobmeier (US 6,390,452) teaches a spare tire safety restraint.

Aldridge (US 6,142,449) teaches a spare tire safety restraint.

Henderson (US 4,848,109) teaches a 2 flexible member safety system.

Searcy (US 3,390,864) teaches a spare tire safety restraint with toggle member.

Reznar (US 6,692,216) teaches a spare tire safety restraint with toggle member.

Kingsbury (US 6,427,981) teaches a clamping spare tire safety restraint.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is 703-305-1940. The examiner can normally be reached on 6:30am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

msl



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